

**Note:** DTC has no responsibility to ascertain that (i) a prime brokerage agreement is in effect between the Prime Broker and the Executing Broker which are identified in any instruction submitted to DTC or (ii) an instruction submitted to DTC by the Prime Broker or by the Executing Broker is in accordance with the provisions of any such prime brokerage agreement.

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[Release No. 34-35970; International Securities Release No. 828; File No. SR-ISCC-95-03]

**Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of Proposed Rule Change Relating to Modification of the Calculation of Its Clearing Fund Formula**

July 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 5, 1995, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-ISCC-95-03) as described in Items I and II below, which items have been prepared primarily by ISCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change through August 1, 1996.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes**

ISCC proposes to modify some of the factors used in the calculation of its clearing fund formula. The modification is being made to accommodate the five day rolling settlement cycle recently instituted by the London Stock Exchange ("LSE").

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes**

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory

organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

**(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

On June 26, 1995, the LSE moved from a ten day rolling settlement period to a five day rolling settlement period.<sup>3</sup> In response to this change in the standard settlement cycle, ISCC is adjusting its method of calculating its clearing fund requirements.<sup>4</sup> ISCC's clearing fund formula requires ISCC members to deposit an amount based upon the following weekly calculation: (Gross Debit Value) × (Market Risk Factor) + (Foreign Exchange Factor). Under the proposal, ISCC is not modifying its clearing fund formula but is modifying the calculations used to derive factors used in the clearing fund formula. ISCC is modifying the calculation of the Gross Debit Value and Market Risk Factor because the determination of these factors relies in part upon the applicable settlement period. ISCC also is adding to its clearing fund formula procedures a requirement that each member must deposit the greater of (a) the largest clearing fund deposit requirement imposed over the previous fifty-two week period or (b) the current weekly calculated clearing fund requirement.<sup>5</sup>

The Gross Debit Value currently is the largest single daily gross debit value, based on debit values for the calendar

week following the week in which the calculation is performed,<sup>6</sup> less 15% of the Institutional Net Settlement ("INS") receive value for that same day.<sup>7</sup> Under a five day settlement standard, it is no longer feasible for ISCC to calculate the required deposit using the existing formula because at the time of the calculation ISCC only will know of the trades settling on one day of the following week.<sup>8</sup> Accordingly, ISCC will now base the Gross Debit Value on the largest single daily gross debit value, based on debit values for five consecutive business days including the day on which the calculation is performed, less 15% of the INS receive value for that day.

The five day settlement standard also requires modification to the Market Risk Factor component of the formula. The formula currently uses a Market Risk Factor based on the largest calculated percentage change in the Financial Times Index over an eleven day period over a minimum of 365 days. This calculation was based on the premise that there could be eleven days from the day a member executed a trade until ISCC liquidated the position.<sup>9</sup> Applying the same reasoning to the five day settlement environment, the Market

<sup>6</sup> Currently, ISCC calculates the Gross Debit Value each Tuesday.

<sup>7</sup> Under the INS system, redeliveries of securities from ISCC members to institutional participants can occur automatically through the LSE. Therefore, ISCC generally is not required to pay the LSE for these securities. The debits arising from these redeliveries may be offset only partially because these securities may be reclaimed (i.e., returned) by the receiver, and in such circumstance, ISCC is liable to the LSE for the full value of the reclamation.

<sup>8</sup> ISCC calculates and collects the required deposit on a weekly basis. If ISCC calculates a member's clearing fund requirement on Tuesday, August 2, only the settlements for trades conducted on Monday, August 1, and settling on Monday, August 8, will be available for consideration. An ISCC member has three business days after notice of an increase in its clearing fund contribution to pay such increase. Under the prior ten day rolling settlement system, the clearing fund formula was based on the actual largest daily obligation of a member during the relevant time period, and the clearing fund deposit could be calculated and collected prior to the settlement day. However, under the five day rolling settlement cycle, because an ISCC member has three business days after the calculation to make additional deposits, ISCC will be calculating and collecting clearing fund contributions generally based on the prior week's trades which already have settled.

<sup>9</sup> ISCC bases its clearing fund calculations on the assumption that it will take one day to sell all of a defaulting participant's positions. Under a ten day settlement period, this resulted in an eleven day exposure for market risk with ten days between trade date and settlement date and one day between settlement date and close out of positions. There also is a one day exposure for foreign exchange risk because ISCC converts U.S. dollars to British pounds on the settlement date and converts the proceeds from the sale of the positions to U.S. dollars the following day.

<sup>2</sup> The Commission has modified the text of the summaries prepared by ISCC.

<sup>3</sup> In 1986, ISCC and the LSE entered into a linkage agreement which allows ISCC to obtain comparison and settlement services in the United Kingdom from the LSE on behalf of ISCC members. Pursuant to this linkage agreement, ISCC is responsible for paying for all securities delivered. ISCC has no requirement to complete open pending trades. On July 18, 1994, the LSE moved to a ten day rolling settlement cycle with trades settling ten days after trade date. Previously, the LSE settled trades on a fortnightly basis with all trades that occurred during a two-week period settling on the same day. In response to the change to a rolling settlement cycle, ISCC adjusted its method of calculating its clearing fund requirements. Securities Exchange Act Release No. 34392, International Series Release No. 687 (July 15, 1994), 50 FR 37798.

<sup>4</sup> When ISCC amended its clearing fund formula rule last year to accommodate the change from a fortnightly system to a ten day rolling settlement system, the rule filing was approved on a temporary basis until July 18, 1995. Securities Exchange Act Release No. 34392, International Series Release No. 687 (July 15, 1995), 50 FR 37798. ISCC cannot request an extension of the approval because the current formula is not appropriate for a five day settling system. ISCC therefore is seeking approval of the proposed change on an expedited basis.

<sup>5</sup> Members will continue to be required to contribute a minimum of \$50,000 to the clearing fund.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

Risk Factor is being amended to reflect that it will be based on the largest percentage change in the Financial Times Index over a six day period over a minimum of 365 days. Initially, the Market Risk Factor will continue to be set at 7%.

No change is required to be made to the formula used to derive the Foreign Exchange Factor. This factor is based in part on the Estimated Foreign Exchange Volatility, an amount that is equal to the largest one day percentage change in the U.S. dollar/British pound foreign exchange rate over a minimum of 365 days and that is unaffected by the change in the standard settlement period.<sup>10</sup> The Estimated Foreign Exchange Volatility will continue to be set at 4%.<sup>11</sup>

ISCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate ISCC's ability to safeguard securities and funds in its custody or control.

#### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

ISCC does not believe that the proposed rule changes will have an impact on or impose a burden on competition.

#### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

ISCC will notify the Commission of any written comments it receives.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Section 17A(b)(3)(F)<sup>12</sup> of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that ISCC's proposal to amend certain factors used in its clearing fund formula should enhance the safeguarding of securities and funds which are in the custody or control of ISCC or for which it is responsible because the

modifications will result in a more feasible means of determining ISCC's risks under the shorter standard settlement cycle. Because of the effect of a five day settlement cycle on the calculation of the clearing fund requirements, the proposal will enable ISCC to require members to deposit the greater of (a) the current calculation amount or (b) the largest calculation amount over the prior fifty-two weeks. Collection of the larger amount for deposit to the clearing fund should provide additional protection to compensate for the change in the calculations of the Gross Debit Value and Market Risk Factor which generally will be based upon previously settled trades rather than outstanding obligations.

On June 17, 1980, the Commission issued a release announcing the standards to be used by the Division of Market Regulation in connection with the registration of clearing agencies.<sup>13</sup> In that release, the Commission stated that it is appropriate for a clearing agency to establish an appropriate level of clearing fund contributions based, among other things, on its assessment of the risks to which it is subject. In addition, contributions to the clearing fund should be based on a formula that applies to users on a uniform, nondiscriminatory basis. The Commission believes that ISCC's proposal is consistent with these guidelines.<sup>14</sup> The clearing fund formula continues to be based upon the risk factors created by LSE's method of settlement (*i.e.*, time, market, and foreign exchange risks). Furthermore, ISCC's proposed changes do not alter the uniform application of the clearing fund formula to all ISCC members in accordance with their usage of the LSE link established by the linkage agreement between ISCC and LSE.<sup>15</sup>

ISCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change

because (i) approval of the current clearing fund formula will expire on July 18, 1995, (ii) the LSE already has implemented the five day rolling settlement system, and (iii) application of an amended clearing fund formula is critical to the clearance and settlement of transactions under the shorter T+5 settlement time frame.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of ISCC. All submissions should refer to the file number SR-ISCC-95-03 and should be submitted by August 11, 1995.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-ISCC-95-03) be, and hereby is, temporarily approved through August 1, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>10</sup> The Foreign Exchange Factor is the product of the Gross Debit Value and the Estimated Foreign Exchange Volatility less the product of the Gross Debit Value times the Market Risk Factor times the Estimated Foreign Exchange Volatility.

<sup>11</sup> During the period from 1989 to 1992, the maximum fluctuation in the U.S. Dollar-British Pound exchange rate was 4.445%. ISCC will continue to review annually the foreign exchange risk factor.

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

<sup>13</sup> Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

<sup>14</sup> ISCC has agreed that prior to the expiration of this order it will report to the Commission the average level of clearing fund deposits for each participant under the ten day settlement cycle and the five day settlement cycle. In addition, ISCC has agreed to report to the Commission how frequently it required each participant to deposit the largest clearing fund deposit over the prior fifty-two weeks rather than the current calculation amount.

<sup>15</sup> The linkage agreement between ISCC and LSE, dated December 22, 1988, allows ISCC to obtain comparison and settlement services in the United Kingdom from the LSE on behalf of ISCC members.

<sup>16</sup> 17 CFR 200.30-3(a)(12) (1994).